



**STATEMENT OF
DENNIS M. DUGAN, DEPUTY DIRECTOR
NATION SECURITY-FOREIGN RELATIONS DIVISION
THE AMERICAN LEGION**

BEFORE THE

**COMMITTEE ON ADMINISTRATION
U.S. HOUSE OF REPRESENTATIVES**

ON

CHANGES IN THE ELECTION PROCESS

APRIL 25, 2001

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Mr. Chairman, The American Legion is pleased to appear before this Committee to express its concerns and views on the need to reform the military overseas absentee voting system. The American Legion believes that it has been a travesty to deny the protectors of our democracy their constitutional right to participate in the electoral process. The servicemen and women whose votes have been disqualified in elections are part of the tradition of the American citizen-soldier whose very sacrifices have preserved the right to vote for all of us.

The controversy over uncounted military absentee ballots in Florida in the 2000 Presidential election has highlighted a longstanding problem which has been allowed to persist. We are led to believe, however, that the large percentage of overseas military ballots that were set aside and not counted during this election was not at all unusual. The percentage of discounted ballots was similar in the 1996 and 1998 Federal elections as well. What was different this year was the closeness of the Presidential election and the distinct possibility that military absentee ballots may have provided the winning edge in the election.

Mr. Chairman, in 1952, the Subcommittee on Elections of this very Committee, conducted hearings on the likely disenfranchisement of military personnel then fighting in the Korean War. President Truman noted that any Federal legislation should be temporary "since it should be provided to make all the necessary changes in State laws before the Congressional elections of 1954."

Now, nearly half a century later, the necessary changes in state laws have not been made. Due to late primaries, lawsuits about redistricting or ballot access, or other problems, State and local absentee ballots oftentimes are not printed nor sent to overseas voters in a timely manner. As a result, overseas military and civilian Americans often do not have time to receive, mark and return their ballots in time to be counted. Many military absentee voters are baffled by overly complicated procedures, and their ballots are not counted due to non-compliance with technical rules and codes. Absentee ballots from forward deployed military members entitled to free postage in locales like the Persian Gulf and Bosnia often are not postmarked at mailing but, many times, are postmarked enroute resulting in late postmarking in CONUS.

This is not to imply that the states are solely to blame. Complacency on the part of military units has undoubtedly compounded military absentee voting. Voting assistance in the Military Services is often an additional duty relegated to the most junior officers. Special vigilance is often not given to handling election mails.

In 1986, Congress passed the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) which attempted to streamline the procedures for overseas absentee voting; for example, it authorized a backup write-in overseas ballot if the voter did not receive one requested from the state; the Postal Service was to ensure that balloting materials were "carried expeditiously and free of postage;" and the Act's overall intent was to ensure "maximum access to the polls" by batch uniformed and civilian overseas voters.

The Federal Voting Assistance Program in the Department of Defense has made progress after more than a decade of working cooperatively with the states. According to the Federal Voting Assistance Program, some 42 states provide a minimum ballot transit time of 45 days; 48 states have removed the request for notarization; and 47 states allow the use of one Federal Post Card Application (FPCA) to request ballots for all elections for Federal offices within a calendar year.

Additionally, a worldwide Internet voting pilot was tested among four states by the Federal Voting Assistance Program using digital signatures and ballot encryption, so that voting via the Internet may provide a solution in the future.

Yet, on the average, some 30 percent of all military absentee ballots are still not counted in Federal elections.

The American Legion believes that Federal legislation is required for two reasons. First, the States have had nearly half a century to resolve the problem, and they have not. National defense is uniquely a Federal responsibility, and the Federal Government has the authority and the responsibility to ensure that military personnel and their families are not disenfranchised by the circumstances of their service. Secondly, Congressional legislation is required because we need a more uniform and consistent system, not 50 systems, whereby the Department of Defense can administer the system with the assurance that our soldiers, sailors, Marines, airmen and Coast Guardsmen and their families, serving overseas, will have their votes counted.

Recognizably, the United States Senate has requested that the General Accounting Office conduct a comprehensive review of the implementation of the 1986 Uniformed and Overseas Citizens Absentee Voting Act, and a preliminary report is due in mid-May. Additionally, at least 16 bills have been introduced in both Houses of Congress addressing this issue.

The aim of such legislation should be to assure that all military absentee voters who lay their lives on the line protecting our interests will have their ballots counted. This is particularly true when there is a growing disparity between those who serve today in an all-volunteer force and the American people in general, and this is evidenced by

demographic factors which indicate that only 7.7 percent of American males, ages 25-34, have served in the armed forces while over 40 percent of our males, ages 55-64, have served.

The American Legion believes that, as a minimum, the following provisions should be included in any congressional legislation:

- The rights of military voters should not be blocked by circumstances such as residency requirements. As it stands now, according to a report published by the Congressional Research Service and the Department of Defense, more than 40 percent of our active duty troops are residents of states that have no specific legislative provisions protecting their right to vote in elections. Residency for military personnel and their families to vote in federal, state and local elections needs to be guaranteed.
- Military voters should be protected from disenfranchisement based on technicalities that are beyond their control. In the November 2000 election, military and overseas ballots were not counted for a variety of reasons including postmark discrepancies, missing notarized signatures, and confusion about residency requirements. Perhaps the States need to cite clear and convincing evidence of fraud before votes are discounted. We believe that at least thirty days should be allowed for military voters to receive and send back their ballots.
- Only a single request for all Federal election ballots should be required in a year.

Recognizably, Congressional legislation is not intended to be a panacea. Federal election laws and guidelines will require cooperation with the states. Many of the changes required to assure the timely receipt and counting of military absentee ballots, particularly in Federal elections, will continue to require actions taken by State and local governments and election boards.

National Commander Ray Smith traveled to the Far East to visit the troops in the Korean demilitarized zone over Thanksgiving. He observed that the single most important issue to our military personnel serving overseas was the discounting of more than 1,400 absentee ballots in Florida during the last Presidential election. Commander Smith noted that "There is nothing partisan about counting the votes of those citizens who took an oath to support and defend the Constitution of the United States against all enemies foreign or democratic. Unless an absentee ballot is so mutilated that the choices can not be determined, the ballot should count. Servicemembers must not be penalized because the system that delivered those ballots was protracted."

The American Legion's National Executive Committee will consider and adopt a final position on military absentee voting next month. The American Legion will not let this issue fade away, and it will appoint a Task Force to pursue this issue at national, State

and local levels. Unfortunately, neither the final Department of Defense report, complete with military absentee voting statistics, nor the GAO report were available in time for this hearing.

In conclusion, The American Legion commends this Committee for holding these hearings. It is recommended that the Congress take the following actions with respect to the military absentee voting issue:

- That the House Administration Committee conduct subsequent hearings on this issue with the General Accounting Office and the Department of Defense when their reports on military absentee voting are available
- That laws and guidelines pertaining to this subject be developed at the Federal, State and local levels, and
- That the Congress encourage broad-based support among veterans and military organizations to develop programs with effective follow-through activities at state and local levels.

Mr. Chairman, the recent downing of a U.S. Navy surveillance aircraft and its crew by the Peoples Republic of China graphically portrayed that even during times of relative peace, American servicemembers continue to go into harm's way in the service of their Country. It is only fitting and proper that they have at least the same right to have their ballot counted as any other American.

Mr. Chairman, this concludes our statement.